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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

November 13, 2000

Reply To
Attn Of: ORC-158

See Distribution List

Re: Union Pacific Railroad Wallace-Mullan Branch
Consent Decree, Case No. CV 99-0606-N-EJL

Attached for your files is a copy of the final text for the First Non-Material Modification to the above-referenced Consent Decree.

This modification changes only the timing and deposit of some payments, without affecting any substantive requirements of the Consent Decree. Because this modification does not "materially affect" this Consent Decree, this modification has been made in accordance with Consent Decree Paragraph 150.

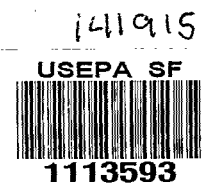
In accordance with Paragraph 150, this non-material modification has been made through the "written consent of the Parties affected by the modifications." The only parties affected by this modification are the U.S. EPA, U.S. Department of Justice, and Union Pacific Railroad Company. The attached signatures on behalf of EPA, DOJ, and Union Pacific confirm their consent to this modification. EPA considers this modification effective upon the date of the last signature: October 20, 2000.

If you have any questions concerning this First Non-Material Modification, please feel free to give me a call: (206) 553-1185.

Sincerely,

Clifford J. Villa
Assistant Regional Counsel

Enclosures





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

SEP 28 2000

Reply To
Attn Of: ECL-113

Robert Lawrence
Davis, Graham & Stubbs LLP
4440 Arapahoe Ave., Suite 140
Boulder, CO 80303

Tom Swegle
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044

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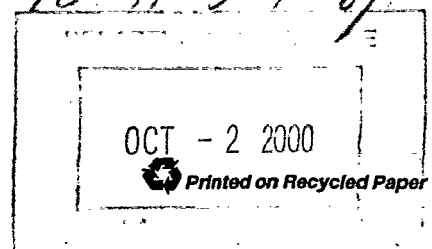
OFFICE OF THE ATTORNEY GENERAL
WASHINGTON, D.C.

Re: Union Pacific Railroad Wallace-Mullan Branch
Consent Decree, Case No. CV 99-0606-N-EJL,
First Non-Material Modification

Dear Gentlemen:

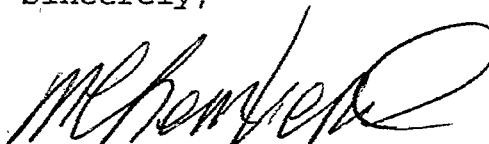
Attached are provisions proposed to modify the above-referenced Consent Decree. The Consent Decree, entered by the U.S. District Court of Idaho on August 25, 2000, resolves claims against Union Pacific Railroad (UP) by the United States, State of Idaho, and Coeur d'Alene Tribe for CERCLA response costs and natural resource damages. The proposed provisions, upon approval, will modify Consent Decree Subparagraphs 73.a, 73.d., and 74.a to read as presented in the attachment.

Paragraph 150 of the Consent Decree provides, "Modifications that do not materially affect this Consent Decree may be made upon the written consent of all Parties affected by the modifications." The proposed provisions would not materially affect the Consent Decree because they do not alter the Work to be performed or total payments to be made by UP. The proposed provisions only affect the deposit of payments from UP to EPA and DOJ, and the timing of some payments from UP to EPA. Because these changes do not materially affect the Consent Decree, they may be made upon the written consent of all Parties affected by the modifications. The only Parties affected by the proposed modification are UP, DOJ, and EPA. Thus, this modification may be made by written consent of UP, DOJ, and EPA.



My signature below indicates EPA's written consent to the proposed provisions. If DOJ and UP also agree to the proposed provisions, please provide written consent through binding signatures below, returning original signature pages to Cliff Villa of the EPA Region 10 Office of Regional Counsel for copying and distribution to all Parties.

Sincerely,



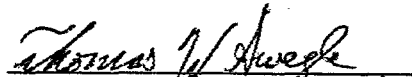
Michael F. Gearheard
Director, Environmental Cleanup Office

FOR THE UNION PACIFIC RAILROAD COMPANY:

Name:
Title:

Date

FOR THE UNITED STATES DEPARTMENT OF JUSTICE:



Name: Thomas W. Swegle
Title: Senior Lawyer

10/13/00

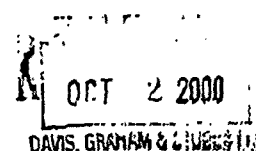
Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

SEP 26 2000

Reply To
Attn Of: ECL-113



Robert Lawrence
Davis, Graham & Stubbs LLP
4440 Arapahoe Ave., Suite 140
Boulder, CO 80303

Tom Swegle
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044

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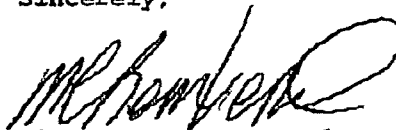
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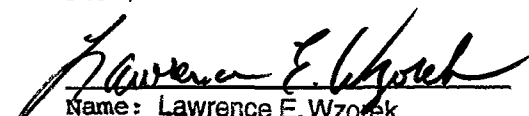
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Sincerely,



Michael F. Gearheard
Director, Environmental Cleanup Office

FOR THE UNION PACIFIC RAILROAD COMPANY:



Name: Lawrence E. Wzorek
Title: Assistant Vice President - Law

October 20, 2000
Date

FOR THE UNITED STATES DEPARTMENT OF JUSTICE:

Name:
Title:

Date

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XVI. REIMBURSEMENT OF RESPONSE COSTS AND PAYMENTS
IN SETTLEMENT OF NATURAL RESOURCE DAMAGES CLAIMS

73. Past Response Costs. Within thirty (30) days of the effective date of this Consent Decree, Settling Defendant shall:

a. Pay to the EPA Hazardous Substance Superfund \$301,509.59 in reimbursement of Past Response Costs, by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2000-V00026, the EPA Region and Site/Spill ID #103D and DOJ case number 90-11-3-128L. Payment shall be made in accordance with instructions provided to the Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office for the District of Idaho following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day. Settling Defendant shall send notice that such payment has been made to the United States as specified in Section XXVII (Notices and Submissions) and to the following:

Region Financial Management Officer
U.S. EPA Region 10
1200 Sixth Avenue
Seattle, WA 98101

The total amount to be paid by Settling Defendant pursuant to this Subparagraph 73.a shall be deposited in the Wallace-Mullan Branch Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Coeur d'Alene Basin Environment or to be transferred by EPA to the EPA Hazardous Substance Superfund.

73.d. Pay to the United States Treasury \$221,624.92 in reimbursement of Department of Justice Past Response Costs, by FedWire Electronic Funds Transfer ("ETF" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2000-V00026, and DOJ case number 90-11-3-128L. Payment shall be made in accordance with instructions provided to the Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office for the District of Idaho following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day. Settling Defendant shall send notice that such payment has been made to the United States as specified in Section XXVII (Notices and Submissions) and to the following:

Chief Environmental Enforcement Division
Environment and Natural Resources Division
U.S. Department of Justice
P. O. Box 7611
Washington, DC 20044-7611
Re: DJ #90-11-3-128L

The total amount to be paid by Settling Defendant pursuant to this Subparagraph 73.d shall be deposited in the Wallace-Mullan Branch Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Coeur d'Alene Basin Environment or to be transferred by EPA to the EPA Hazardous Substance Superfund.

74. Future Response Costs

a. Payments to EPA.

(1) Settling Defendant shall reimburse the EPA Hazardous Substance Superfund for all Future Response Costs not inconsistent with the National Contingency Plan, excepts for costs paid pursuant to Paragraph 74.a(3). The United States will send Settling

FIRST NON-MATERIAL MODIFICATION

Defendant a bill requiring payment that includes a Superfund Cost Organization Recovery Enhancement System report on a periodic basis. Settling Defendant shall make all payments within forty-five (45) days of Settling Defendant's receipt of each bill requiring payment except as otherwise provided in Paragraph 75. The Settling Defendant shall make all payments required by this Paragraph in the form of a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund" and referencing the EPA Region and Site/Spill ID #103D, the DOJ case number 90-11-3-128L, and the name and address of the party making payment. The Settling Defendant shall send the check(s) to:

U.S. Environmental Protection Agency
EPA Hazardous Substance Superfund
P.O. Box 360903M
Pittsburgh, Pennsylvania 15251

and shall send copies of the check(s) to the United States as specified in Section XXVII (Notices and Submissions) and to:

Regional Financial Management Officer
U.S. EPA Region 10
1200 Sixth Avenue
Seattle, WA 98101

(2) The total amount to be paid by Settling Defendant pursuant to Subparagraph 74.a shall be deposited in the Wallace-Mullan Branch Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions, including oversight of response actions, at or in connection with the Coeur d'Alene Basin Environment, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

(3)(i) Periodically, not to exceed once every six months and not prior to final reconciliation of any previous advance payment (including resolution of any contested advance payment), unless otherwise agreed in writing by EPA and Settling Defendant, EPA may request

FIRST NON-MATERIAL MODIFICATION

that Settling Defendant provide payments for Governments' Project Coordinator oversight costs that are Future Response Costs ("GPC Oversight Costs") in advance of incurring such GPC Oversight Costs. EPA's request for such advance payment shall include a scope of work describing the oversight of the Work that will be performed with such advance payment. The scope of work shall include a detailed written estimate of the oversight costs to be incurred for oversight of the Work and identification of the persons or entities expected to perform the oversight of the Work covered by such advance payment. Any such request for advance payment of GPC Oversight Costs shall cover no more than a six-month period. Such six-month period must be within one year from the date of the request for advance payment.

(ii) Settling Defendant in good faith shall review EPA's request for advance payment of GPC Oversight Costs, and shall pay such GPC Oversight Costs within thirty (30) days of Settling Defendant's receipt of EPA's request for advance payment, unless the dispute resolution procedures set forth in subparagraph 74.a.(3)(vi) are invoked.

(iii) Settling Defendant shall make such advance payment consistent with the payment provisions of Subparagraph 74.a(1) and such advance payment shall then be deposited in the Wallace-Mullan Branch Special Account for disbursements to provide for oversight of the Work. Within fifteen days of receipt by EPA of a submittal from the GPC that serves as a basis for payment by EPA of GPC Oversight Costs from the EPA Hazardous Substance Superfund and/or the Wallace-Mullan Branch Special Account, EPA will provide a copy of that submittal to Settling Defendant.

(iv) In the event that Settling Defendant provides an advance payment for GPC Oversight Costs under Subparagraph 74.a(3), EPA shall use its best efforts to ensure that the actual costs incurred for oversight of the Work identified in its request under Subparagraph

74.a(3)(i) do not exceed the cost estimate provided in EPA's request. EPA shall not seek to recover as Future Response Costs under Subparagraph 74.a(1) any amount paid for oversight of the Work under Subparagraph 74.a(3).

(v) Within sixty (60) days of the end of the period for which Settling Defendant provides advance funding, EPA shall provide Settling Defendant with an accounting of the actual GPC Oversight Costs incurred for that period. Such accounting shall at a minimum contain all of the substantive information otherwise provided under a Superfund Cost Organization Recovery Enhancement System Report in a format appropriate to the GPC oversight work actually performed, and a comparison between EPA's cost estimate and actual costs incurred.

(vi) If Settling Defendant disputes all or a portion of EPA's request for advance payment of GPC Oversight Costs, Settling Defendant may request and EPA agrees to enter into informal dispute resolution to resolve the dispute. Informal dispute resolution shall, at Settling Defendant's request, include a meeting(s) or telephone conference(s) among the United States' and Settling Defendant's Project Coordinators and their immediate supervisors to attempt to resolve the dispute. The Parties shall in good faith use their best efforts to reach a consensus and resolve the dispute. If the Parties have not reached a consensus within twenty days of Settling Defendant's request for informal dispute resolution, Settling Defendant may either: (1) pay the disputed amount of GPC Oversight Costs in accordance with Subparagraph 74.a(3)(ii); or (2) pay the disputed amount of GPC Oversight Costs under protest. If Settling Defendant elects to make an advance payment of the disputed amount of GPC Oversight Costs under protest, Settling Defendant may contest such advance payment under the criteria set forth in Paragraph 75 within forty-five (45) days of Settling Defendant's receipt of EPA's next bill for payment of Future

Response Costs under Paragraph 74.a(1). However, Settling Defendant shall not be required to establish an interest bearing escrow account and remit to that escrow account funds equivalent to the amount of the contested advance payment as would otherwise be required under Paragraph 75. In the event that Settling Defendant prevails in contesting all or a portion of such advance payment of GPC Oversight Costs, Settling Defendant shall receive a credit for the contested amount against Future Response Costs on that bill for Future Response Costs received from EPA and any subsequent bill submitted by EPA under Paragraph 74.a(1) for Future Response Costs to the extent necessary for Settling Defendant to receive full credit for the disputed amount as to which it prevailed. Nothing herein is intended to limit in any way Settling Defendant's right to contest payment of any Future Response Costs under this Decree, including any Future Response Costs for which Settling Defendant has made advance payment.